

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
(Big Stone Gap Division)**

MELINDA SCOTT,

Plaintiff,

v.

WISE COUNTY DEPARTMENT OF
SOCIAL SERVICES, *et al.*,

Defendants.

Case No. 2:20-cv-00014-JPJ-PMS

**MOTION TO SET ASIDE DEFAULT
JUDGMENT**

NOW COMES Joshua Moon, and moves to set aside the default judgment against him in this matter pursuant to Fed. R. Civ. P. 55 (c). In support of this Motion, Mr. Moon states as follows:

1. He became aware of the default judgment in this matter on November 23rd, 2020 because he received a copy of the default judgement sent from the Office of the Clerk. Mr. Moon did not receive the summons in this matter from the party to whom it was delivered in Florida.
2. Mr. Moon immediately moved to retain counsel once he received notice of the default. Counsel with whom Mr. Moon was previously acquainted referred Mr. Moon to undersigned counsel, and within days the final arrangements had been made to retain undersigned counsel.
3. Mr Moon is contemporaneously filing a Motion to Dismiss in this matter.
4. All factors from *Payne v. Brake*, 439 F.3d 198 (4th Cir. 2006) weigh in favor of setting aside the default in this case. Specifically:
 - a. Mr. Moon has a meritorious defense;

- b. Mr. Moon acted with reasonable promptness after he became aware of the default;
- c. Mr. Moon bears little or no personal responsibility for the default, given the circumstances relating to service which are noted in the contemporaneously-filed Motion to Dismiss and its accompanying memorandum;
- d. There will be no prejudice to Ms. Scott if relief from default is granted, because she has not borne the expense of a trial in this matter or otherwise suffered from the litigation to date;
- e. Mr. Moon has no history of dilatory action in this matter

WHEREFORE, Defendant Joshua Moon moves that the default judgment against him be set aside pursuant to Fed. R. Civ. P. 55(c), and incorporates by reference all the arguments made in the accompanying Memorandum of Law.

Respectfully submitted this the 7th day of December, 2020,

JOSHUA MOON

By Counsel:

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